

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LeRoy Smithrud,

Plaintiff,

Civil No. 10-4451 (JNE/JSM)

v.

City of Minneapolis; John and Jane
Does 1-10,

Defendants.

ORDER

LeRoy Smithrud,

Civil No. 10-4452 (JNE/JSM)

Plaintiff,

v.

City of St. Paul; John and Jane Does 1-10,

Defendants.

On September 18, 2012, this Court dismissed Plaintiff's Verified Complaints against Defendants City of Minneapolis and City of St. Paul for failure to state a claim. Judgment was entered in both cases on September 19, 2012. On October 16, 2012, Plaintiff filed Motions to Amend Findings of Fact and Conclusions of Law and to Alter or Amend Judgment Pursuant to Fed. R. Civ. P. 52(b) and 59(e).

Rule 52 of the Federal Rules of Civil Procedure deals with "an action tried on the facts without a jury" in which the Court makes findings of fact. Fed. R. Civ. P. 52(a). Rule 52(b) permits the Court to amend its findings or make additional findings. Rule 52 does not apply

here, however, because the Court dismissed both of Plaintiff's cases for failure to state a claim under federal law. These cases were never tried before the Court, nor did the Court make any findings of fact. Rule 11 requires that a lawyer not file a motion that has no basis in fact or law. Fed. R. Civ. P. 11(b). Plaintiff's purported Rule 52(b) motion has no such basis. The best that can be said of the motion and its supporting blather is that it is frivolous.

Federal Rule of Civil Procedure 59(e) permits a party to move to alter or amend a judgment. Fed. R. Civ. P. 59(e). Rule 59(e) "motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence." *Wells Fargo Bank, N.A. v. WMR e-PIN, LLC*, 653 F.3d 702, 714 (8th Cir. 2011) (internal quotation marks omitted). "Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment." *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930, 933 (8th Cir. 2006) (internal quotation marks omitted). "A district court has broad discretion in determining whether to grant or deny a motion to alter or amend judgment pursuant to Rule 59(e)." *Id.* Plaintiff asserts that the Court erred in concluding that his Verified Complaints failed to state a claim under federal law.¹ The Court disagrees. The Court has considered Plaintiff's motions and concludes that there have been no manifest errors of law or fact. Plaintiff's motions [Civil No. 10-4451 (JNE/JSM), Docket No. 81 and Civil No. 10-4452 (JNE/JSM), Docket No. 77] are DENIED.

Dated: October 23, 2012

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge

¹ The Court notes that many of Plaintiff's current arguments are identical to those that have been previously presented to and considered by the Court in one or more of the Plaintiff's prior submissions. Plaintiff also attempts to now assert new legal arguments that could have been, but were not, raised in those previous submissions.